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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 19.03.2019

+ **FAO(OS) 51/2019 & CM APPL. 11494/2019**

RAJESH CHANDNA & ORS

..... Appellants

Through: Mr.Shikhil Suri with Mr.Shiv Kumar
Suri, Ms.Shilpa Saini, Advs.

versus

AISHANI CHANDNA MEHRA

..... Respondent

Through: Mr. Aman Nandrajog with
Mr.Summer Sodhi, Ms.Aarxoo Aneja,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

CAV 246/2019

Counsel for the respondent/caveator enters appearance.

The caveat stands discharged.

FAO(OS) 51/2019 & CM APPL. 11494/2019

1. The appellants, who were the defendants in the suit, have assailed the order dated 08.01.2019 passed by the learned Single Judge in I.A. No.12875/2018 – preferred by the defendants under order 7 rule 11 CPC to seek rejection of the plaint. The learned Single Judge has, vide his detailed order, dismissed the said application.

2. The respondent has preferred CS(OS)235/2018 to seek the relief of partition of the estate of Ms.Rita Chandna, who had three children – including Mr.Rakesh Chandna, a pre-deceased son. The other two children of Ms.Rita Chandna and their branches are the appellants/defendants.

3. Mr.Rakesh Chandna was married to Ms.Shilpi Mehra. From the wedlock of Mr.Rakesh Chandna with Ms.Shilpi Mehra, two offspring were born—including the respondent Ms.Aishani Chandna and Mr.Sukrit Chandna (son). Mr. Rakesh Chandna died in the year 2000. After the demise of Mr.Rakesh Chandna, his widow Ms.Shilpi Mehra married Mr.Sunil Mehra and vide a registered adoption deed dated 03.02.2004, he purportedly adopted the respondent/plaintiff Ms.Aishani Chandna Mehra.

4. Ms.Rita Chandna passed away on 14.04.2018, whereafter the respondent/plaintiff instituted the aforesaid suit seeking the relief of partition of the estate of Ms.Rita Chandna. The defendants moved the aforesaid application I.A.No.12875/2018 under order 7 rule 11 of the CPC seeking rejection of the plaint on the premise that the plaintiff having been adopted by Mr.Sunil Mehra vide a registered adoption deed dated 03.02.2004, she had no right to claim partition in respect of estate left by Ms.Rita Chandna

5. The pleading of the plaintiff/respondent before the learned Single Judge was that the said adoption was void *ab-initio* on the ground that Mr.Sunil Mehra had a female child, namely Ms.Shraddha Mehra, living at the time of the adoption on 03.02.2004.

6. The contention of the appellants/defendants was that the said registered adoption deed dated 03.02.2004 had not been separately assailed by the respondent/plaintiff within the period of limitation prescribed in

Article 57 of the Schedule of the Limitation Act, which provides the period of limitation as three years, “*to obtain a declaration that an alleged adoption is invalid, or never, in fact, took place,*” and the said period of limitation begins to run “*when the alleged adoption becomes known to the plaintiff*”. The respondent/plaintiff not having assailed the said adoption by seeking a declaration in respect thereof, even within three years of attaining majority, she could not seek partition of the estate of Ms.Rita Chandna. She could not seek partition without seeking the said declaration which, in fact, was barred by limitation.

7. The contention of the appellants/defendants was also that Section 16 of the Hindu Adoptions and Maintenance Act (HAMA) raises a statutory presumption in favour of a valid adoption, unless and until it is disproved to the contrary. Since, the registered adoption deed dated 03.02.2004 has not been assailed and disproved to be invalid, the suit for partition by the respondent/plaintiff could not proceed.

8. On the other hand, the submissions of the respondent/plaintiff was that the adoption deed dated 03.02.2004 was void for the aforesaid reason and, consequently, there was no necessity for the respondent/plaintiff to seek a declaratory relief in respect of the said adoption, since a void adoption is as good as no adoption.

9. According to the respondent/plaintiff, she could ignore the said adoption – as it was void, and it was not necessary for her to seek a specific declaration in respect thereof. The plaintiff also contended that it was not necessary for the plaintiff to seek the relief of declaration in respect of the said adoption in her suit to claim partition of the estate of Ms.Rita Chandna.

10. The learned Single Judge has, while passing the impugned order, culled out the question which arose for consideration in the following terms:-

“12. The question for consideration thus boils down to, whether for having an adoption declared as null and void, and for cancellation thereof, a suit or other proceeding is required to be instituted or even without instituting the suit or other proceeding, the invalidity of the adoption can be set up by way of a claim or defence in a suit or other proceeding, wherever Adoption Deed is cited to deny the claim or to meet the defence.”

11. The said issue has been answered by the learned Single Judge in para 26 of the impugned order by observing as follows:-

“The same unequivocally provides that any adoption made in contravention of the provisions of the Act shall be void and an adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of adoption nor destroy any rights of the person in the family of his or her birth. If that be so, then in my view there is no need for institution of a suit for declaration as void of the adoption and for cancellation of the adoption deed vis-a-vis the plaintiff. However, if such a suit were to be filed, it would have to satisfy the conditions as to limitation.”

12. The learned Single Judge has also held that an adoption, which is contrary to the provisions of the Act, is void and does not create any right or destroy any right of the adoptee. In this regard, reference was made to the section 5 of the HAMA. The meaning of the word “void” as defined in the Black's Law Dictionary is noticed. The learned Single Judge has also considered several decisions of the Supreme Court in cases involving “void” transactions, and the manner in which the said expression is understood in

law.

13. Learned counsel for the appellants has urged that the respondent/plaintiff, without expressly seeking relief of declaration in relation to the registered adoption deed is, in fact, seeking relief premised on the fact that the adoption deed is void. He submits that in the face of the registered adoption deed, the respondent could not file the suit for seeking partition of the estate of Ms.Rita Chandna, since there is a strong legal presumption against the respondent that she has no right to the estate of Ms.Rita Chandna.

14. The submission of the learned counsel for the appellants, in substance, is that without first dislodging the said presumption either in an independent proceeding, or in the present suit by claiming a specific relief of declaration, the relief of partition could not have been sought straightaway by preferring the suit in question. The further submission is that the relief of declaration in respect of their registered adoption deed is barred by limitation under Article 57 of the Schedule to the Limitation Act. The respondent/plaintiff could not have got over the said bar of limitation, by not seeking the specific relief of declaration that the adoption deed was null and void.

15. The further submission is that though section 31 of the Specific Relief Act states that the person against whom the written instrument is void or voidable, and who has reasonable apprehension that said instrument—if left outstanding, may cause serious injury, may sue to have it adjudged void or voidable, when dealing with a registered instrument of adoption, it was incumbent on the respondent to sue to have the registered adoption deed adjudged void, and the expression “may” ought to have been read and

understood as “shall” in the said context.

16. In support of his submissions, learned counsel for the appellants sought to place reliance on some of the decisions already taken note by the learned Single Judge in the impugned order. The decisions relied upon by the appellants are as follows:-

- (i) ***Sitabai Vs. Ramchandra***, 1969(2) SCC 544.
- (ii) ***Mst. Deu Vs. Laxmi Narayan***, (1998) 8 SCC 701.
- (iii) ***Dheer Singh Vs. Amar Singh***, 1997 SCC Online Raj 649.
- (iv) ***Jai Singh Vs. Shakuntala***, (2002) 3 SCC 634.

17. Learned counsel for the appellants also submitted that the learned Single Judge has failed to properly appreciate the judgment of the Supreme Court in ***Prem Singh and Others vs. Birbal and Others***, (2006) 5 SCC 353.

18. On the other hand, learned counsel for the respondent/ caveator has supported the impugned order. He submits that since the registered adoption deed in question is null and void by force of section 5 of the HAMA—on account of the adopter Mr.Sunil Mehra having a living daughter at the time of adoption, namely, Ms.Shraddha Mehra, it was not essential for the respondent to seek a declaration in respect of this said void adoption.

19. He submits that the learned Single Judge has rightly placed reliance on ***Prem Singh*** (*supra*). He has also relied upon the decision in ***Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and Others***, (2013) 5 SCC 427, on the purport and meaning of a “void” transaction, and on the decision in the ***State of Maharashtra v. Pravin Jethalal Kamdar (dead) by LRs***,

(2000) 3 SCC 460, to say that a declaration would not be required in respect of a “void” document/ transaction, and that when possession is sought by the plaintiff, it is the limitation prescribed for the said relief i.e. 12 years, which would be attracted, and not the limitation prescribed for the relief of declaration.

20. Having heard the learned counsel and considered their respective submissions and having perused the impugned order, we are of the considered view that the impugned order does not call for interference, since the legal position taken note of in the impugned order is sound, and duly supported by the several precedence cited by the learned Single Judge.

21. Section 11 of the HAMA prescribes that if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son’s daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption.

22. Section 5(1) of HAMA states that “*No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and **any adoption made in contravention of the said provisions shall be void.***” (emphasis supplied). The Chapter referred to in the aforesaid quotation is Chapter II of HAMA which begins with Section 5. Section 11 – taken note of hereinabove, also falls in the same Chapter. Therefore, an adoption made in contravention of, inter alia, Section 11(ii), by force of Section 5(1) of HAMA, is void.

23. The issue that arises for consideration is whether a transaction, which is void, can be infused with life; given effect to, and; enforced, merely because a specific declaration with regard to the voidity of such a

transaction is not sought by one of the parties to the transaction, or someone affected by it. The answer to the aforesaid question, which emerges from numerous decisions taken note of by the learned Single Judge, is that it is not necessary that a specific declaration in respect of a void transaction be sought, and a party can, on the premise that the transaction is void, seek to enforce his or her rights as may be available in law.

24. The learned Single Judge in this regard has referred to several decisions in his scholarly order. In ***Prem Singh*** (supra), the Supreme Court expressly held that “*when a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eyes of law, as it would be a nullity*”.

25. There is a catena of decisions taken note of by the learned Single Judge in the impugned order, including in respect of Article 57 of the Schedule to the Limitation Act, which hold that Article 57 would apply only to suits filed purely for seeking a declaration that an adoption is invalid, or that it never took place but, where the suit is for possession of property for which another period of limitation is prescribed, the limitation would be governed by the law applicable to such other relief, although the question of validity of adoption may arise for determination. The fact that the person has not sought a declaration of voidity in respect of the adoption deed, would not bar the suit for possession of property on the ground of limitation prescribed under Article 57 of the Schedule to the Limitation Act. The following extract from the impugned order is illuminating and the same reads:

“21. Otherwise also, I find the question to be not res integra.

Reference in this regard may be made to:

(A) Gopal Vs. Basdeo 1886 SCC OnLine All 84 (DB) holding that Article 57 can apply only to suits purely for a declaration that an adoption is invalid or never, in fact, took place but where the suit is for possession of property, to which another limitation law is applicable, it will be governed by it, although the question of validity of adoption may arise. It was further held that it is discretionary in a Court to grant relief by declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former.

(B) Gulab Singh Vs. Natthu Singh 1895 SCC Online All 14 also holding that Article 57 applies to simplicitor suits for declaration of invalidity of adoption.

(C) Doddawa Vs. Yellawa AIR 1922 Bom 223 (FB) also holding that omission to bring a declaratory suit qua adoption within the time provided therefor is not a part of a suit for possession. It was further held that the mere fact that an adoption alleged to have taken place is not challenged does not set time running in favour of any party, so that another party may acquire a title and it is open to the other party to say “your adoption is invalid” and make a substantive claim.

(D) Radha Dulaiya Vs. Rashik Lal AIR 1923 All 25 (DB) also holding that where the suit is not merely for declaration of invalidity of adoption, it will not be governed by Article 57 of the Schedule to the Limitation Act.

(E) Kalyanadappa Vs Chanbasappa 1924 SCC OnLine PC 14 holding that, (i) the words “to obtain a declaration that an alleged adoption is invalid...” in Article 57 of the Schedule to the Limitation Act relate to Section 34 of the Specific Relief Act; (ii) that the date from which the time of three years provided for in Article 57 begins to run is a subjective or personal date; and, (iii) that if the adoption is void, the plaintiff is entitled to brush it aside and sue for possession to which he has a right and the time limit wherefor is twelve years from the death of the person as whose reversioner possession is claimed.

(F) Ravula Kamalamma Vs. Ravula Venkata Narasimha Reddi MANU/AP/0205/1967 (DB) also holding that (i) the relief that the adoption is invalid or in fact did not take place need not expressly be asked for; however, if in essence that is the relief which is asked for, undoubtedly Article 57 would apply; (ii) a suit for possession on the basis of the plaintiff's title would not be a suit which could be said to fall within the purview of Article 57, though it might be necessary in such a suit for the plaintiff to establish incidentally the invalidity of adoption; and, (iii) merely because an issue in reference to adoption is framed and that the matter has been gone into, cannot change the character of the suit and convert the suit into one under Article 57 of the Schedule to the Limitation Act.

(G) Jamnadas Vs. Radhabai MANU/SC/0549/1969 also holding that a mere statement in the plaint that the adoption had never taken place or was invalid does not attract Article 57 of the Schedule to the Limitation Act, when the real relief claimed in the suit is otherwise. It was further held that the fact that it was necessary to decide the question of adoption, still did not bring the suit within the purview of Article 57.

(H) Sadasiba Ratha Vs. Bimala Dibya AIR 1982 Ori 129 holding that (i) the relief even though claimed of declaration of invalidity of adoption was redundant and a surplusage inasmuch as a declaration regarding adoption was not necessary to decree the suit for partition, though it may be necessary to decide the said question; and, (ii) there was a consensus of the High Courts that Article 57 applies only to suits where a bare declaration that an adoption is invalid is asked for and it does not apply to a suit for possession of property, even though it may be necessary to find that a given adoption is invalid.

(I) Hiranman Manga Jangale Vs. Girjabai 1982 SCC OnLine Bom 292 also holding that a mere fact that an adoption alleged to have taken place is not challenged does not set time running.

(J) Daya Devi Vs. Angoori Devi AIR 2002 Delhi 295 held that Article 57 of the Limitation Act deals with a suit brought to obtain a declaration to the effect that an alleged adoption is

invalid or never in fact took place; however, where the principal relief is not the relief for obtaining declaratory decree as to the adoption being invalid but is a suit for the principal relief to recover possession on the ground of title as heirs and it was only incidentally that the adoption deed was sought to be avoided, the suit could be instituted within the limitation prescribed for a suit for possession.

(K) Bodla Ravindranath Vs. Chintala Venkatalaxmi 2005 SCC OnLine AP 587 holding that the relief that an adoption is invalid need not expressly be asked for; if and only if, it is the essence i.e. the relief asked for by the plaintiff, will Article 57 apply. It was held to be the settled view that a suit for possession on the basis of title would not be a suit which would fall under Article 57 merely because an issue in reference to adoption is framed and that that has been gone into. The same was held not to change the character of the suit. SLP(Civil) No.13899/2006 preferred against the said judgment was dismissed on 15th January, 2008.

(L) Gangavva Vs. Ningavva 2008 SCC OnLine Kar 44 holding that, (i) the words in Article 57 of the Schedule to the Limitation Act, "to obtain a declaration" have to be understood in the context of Section 34 of the Specific Relief Act; (ii) the suit envisaged in Article 57 is a suit under Section 34 of the Specific Relief Act; (iii) for Article 57 to apply, the suit must be in truth and substance, one for a declaration that an adoption is invalid; however, when the plaintiff does not admit adoption, the question of the plaintiff seeking a declaration that the alleged adoption is invalid, would not arise; (iv) it is not necessary for the plaintiff to seek such a declaration before claiming right to the property by inheritance; (v) a suit for possession or a suit for partition do not fall within Article 57, even if in such a suit, the Court has to incidentally go into the question of validity of adoption; and, (vi) a suit for partition cannot be treated as one for setting aside of the adoption, merely because one of the claims set up therein attracts Article 57."

26. The learned Single Judge notices the definition of the expression

“void” as defined in Black’s Law Dictionary, 8th Edition as “*of no legal effect; null; of no effect whatsoever; thus i.e. an absolute nullity*”. Thus, a void action/ transaction is one which is regarded as not having taken place. It is an action/ transaction of which no cognizance need be taken and, in law, it has no bearing on the legal rights or obligations of the concerned parties. It is still born, i.e. it is incapable of being infused with life by either any act, or omission, of the parties.

27. Section 5(2) of HAMA in terms provides that “*An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth*”. Thus, an adoption in contravention of HAMA – including Section 11 thereof, is of no effect.

28. No doubt, Section 16 raises a statutory presumption in favour of a registered document relating to adoption. Section 16 States that “*Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved*”.

29. A presumption is always rebuttable. A presumption is an initial statutory assumption of a fact, or set of facts. That assumption is not un rebuttable. It is rebuttable. If it would be un rebuttable, it would cease to be an assumption. It would amount to a statutory deeming fiction. Therefore, a plaintiff who stakes a claim or a right, inter alia, on the basis

that an earlier transaction is void (which, if valid, would have the effect of divesting the right of the plaintiff), he would have to dislodge the statutory presumption in favour of the transaction. To dislodge such a presumption, the plaintiff is entitled to lead the necessary evidence, and merely because the law raises a presumption in favour of the transaction – which the plaintiff claims to be void, would not be a reason to shut out even that right of the plaintiff, i.e. to dislodge the presumption. A statutory presumption cannot be treated as a statutory bar. It is implicit in every statutory presumption, that the party which challenges and seeks to dislodge the presumption, should be entitled to avail of the opportunity to dislodge the same.

30. The learned Single Judge has referred to ***Pravin Jethalal Kamdar***, (supra), wherein it was held that when, in pursuance to an order which is without jurisdiction and nullity, a sale deed is executed, the sale deed is also a nullity and it is not necessary to seek a declaration about the invalidity of the sale deed. It is open to a plaintiff to ignore the said document, and prefer a suit to seek a substantive relief on the premise that such a document is a nullity. No doubt, the onus would lie on such a plaintiff to establish the nullity of the document in the course of establishing his claim.

31. The learned Single Judge also notes the decision in ***Sanjay Kaushish Vs. D.C. Kaushish***, AIR 1992 Delhi 118, wherein it is held that if a particular document or decree is void, the person affected by the said document or decree can very well ignore the same, and file a suit seeking substantive relief which may be available to him, without seeking any declaration that the said decree or document is void, and it is not necessary

for him to seek a consequential relief of cancellation of a null or void document or decree. On the same aspect, the learned Single Judge has noticed *Ranganayakamma Vs. K.S. Prakash*, (2008) 15 SCC 673; and *The Rajasthan State Industrial Development* (supra).

32. The decisions relied upon by learned counsel for the appellant have all been considered in the impugned order and, in our view, the learned Single Judge has correctly appreciated the context in which those decisions were rendered. We agree with the learned Single Judge that those decisions do not advance the plea of the appellant that the suit of the respondent was barred by limitation under Article 57 of the Schedule to the Limitation Act, since, the respondent plaintiff has not preferred his suit to seek a specific relief of declaration in respect of the registered adoption deed within the period of limitation prescribed in Article 57, and has not sought a declaration to have the registered adoption deed declared void in her suit. The learned Single Judge has observed in the impugned order in relation to the aforesaid decisions as follows:

“13. Supreme Court in Sitabai supra was not concerned with such an issue; otherwise it was held, (i) the effect of adoption under the Act is that it brings about severance of all ties of the child given in adoption in the family of his or her birth; (ii) the child altogether ceases to have any ties with the family of his birth; (iii) correspondingly, these very ties are automatically replaced by those created by the adoption in the adoptive family; and, (iv) when either of the spouses adopts a child, all the ties of the child in the family of his or her birth become completely severed and these are all replaced by those created by the adoption in the adoptive family; in other words, the result of adoption by either spouse is that the adoptive child becomes the child of both the spouses.

14. The same was the position in Dheer Singh supra and the observation therein:-

“Once, adoption deed has been signed by the natural and the adoptive father, the presumption of the adoption deed being genuine has to be given due weightage as Section 16 of the Act, 1956 is a rule of evidence. Once the registered adoption deed is produced in the court, the court is bound to presume that the adoption has been made in compliance of the Act unless it is disproved. The said presumption is not merely a statutory presumption which can be rebutted in ordinary manner of rebuttal. This presumption has to be dislodged by disproving all the facts of adoption. The courts are bound to take the factum of adoption proved and onus is shifted on the other side to prove the contrary by disproving adoption.”

cannot be read as precedent, making it incumbent on a person whose Deed of Adoption is invalid, to institute a suit or other proceeding for having the said invalidity declared.

15. Emphasis of the counsel for the defendant no.1 however was on Mst. Deu supra and on the basis whereof it was argued that it was incumbent on the plaintiff to, within the limitation prescribed in Article 57 of the Schedule to the Limitation Act, 1963, institute a suit to have the adoption deed declared null and void and the plaintiff cannot in this suit for partition prove the invalidity of adoption.

16. Supreme Court in Mst. Deu supra was concerned with an application for substitution, on the basis of an adoption deed, as a legal heir of a plaintiff in a suit for partition. It was held (i) that in view of Section 16 supra, whenever any registered document purporting to record an adoption made and signed by the parties mentioned therein is produced before the court, the court shall presume that the adoption has been made in compliance with the provisions of the said Act unless and until it is disproved; (ii) it was not open to the defendants in the said

suit for partition to collaterally challenge the said “registered deed of partition” (supposedly incorrect for “registered deed for adoption”); and, (iii) in view of Section 16 supra it was open to the defendants to disprove such deed of adoption but for that they had to take independent proceeding; the High Court was fully justified in directing substitution on the basis of the registered adoption deed.

17. I am afraid, the aforesaid judgment also cannot be read as a precedent on the question as has arisen. What has been held qua the aspect of substitution as legal heir, will not apply to a substantive claim in a suit.

18. Jai Singh supra also, only lays down that Section 16 envisages a statutory presumption that in the event of there being a registered document pertaining to adoption, there would be a presumption that adoption has been made in accordance with law.

19. The counsel for the defendant no.1, on the basis of Mst. Deu has argued that similarly the plaintiff in the present suit for partition cannot make a claim contrary to the registered adoption deed.”

33. Learned counsel for the appellant has not been able to point out any error in the appreciation of the aforesaid decision by the learned Single Judge. We agree with the analysis undertaken by the learned Single Judge in the impugned order.

34. The submission of learned counsel for the appellant, that because Section 16 of the HAMA raises a mandatory statutory presumption in favour of a registered adoption deed (which is made and signed by the person giving and the person taking the child in adoption) – that the said adoption is made in compliance with the provisions of the Act, it was mandatory for the respondent to seek the specific relief of declaration in respect of the adoption deed – that it is void, has no force. Section 31 of the Specific

Relief Act consciously uses the expression “may”, and not “shall”, and in the context, the appellant has not been able to show that “may” should be read as “shall”. That is not the way Section 31 of the Specific Relief Act has been interpreted. In fact, the consistent view has been to read “may” as “may”, and not “shall”.

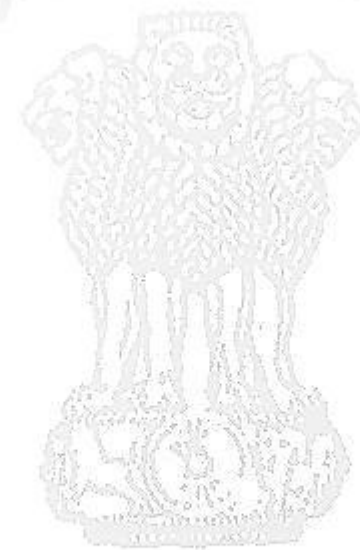
35. For the aforesaid reasons, we find no merit in the present appeal and the same is dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

MARCH 19, 2019

Sr/ *B.S. Rohella*



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